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HOUSE BILL 207

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

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AN ACT

RELATING TO TAXATION; PROVIDING A GROSS RECEIPTS TAX DEDUCTION
FOR CERTAIN BUSINESS-TO-BUSINESS SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Gross Receipts and
Compensating Tax Act is enacted to read:

"~~[NEW MATERIAL]~~ DEDUCTION--GROSS RECEIPTS--CERTAIN
BUSINESS-TO-BUSINESS SERVICES.--

A. Receipts from the sale of accounting services,
engineering services, financial management services,
information technology services, human resources services,
legal services and temporary services may be deducted from
gross receipts if:

(1) the sale is made to a sole proprietorship,
a limited liability company, a partnership or a corporation;

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1 (2) the sale is made to an entity with a New
2 Mexico tax identification number or an equivalent tax
3 identification number from another state; or

4 (3) the purchaser presents to the seller a
5 nontaxable transaction certificate or alternative evidence
6 entitling a person to a deduction pursuant to Section 7-9-43
7 NMSA 1978.

8 B. A taxpayer allowed a deduction pursuant to this
9 section shall report the amount of the deduction separately in
10 a manner required by the department.

11 C. As used in this section:

12 (1) "accounting services" means the systematic
13 and comprehensive recording of financial transactions
14 pertaining to a business entity and the process of summarizing,
15 analyzing and reporting these transactions to oversight
16 agencies or tax collection entities, including certified public
17 auditing, attest services and preparing financial statements,
18 bookkeeping, tax return preparation, advice and consulting and,
19 where applicable, representing taxpayers before tax collection
20 agencies. "Accounting services" does not include, except as
21 provided with respect to financial management services,
22 investment advice, wealth management advice or consulting or
23 any tax return preparation, advice, counseling or
24 representation for individuals, regardless of whether those
25 individuals are owners of pass-through entities, such as

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1 partnerships, limited liability companies or S-corporations;

2 (2) "engineering services" means consultation,
3 the production of a creative work, investigation, evaluation,
4 planning and design, the performance of studies and reviewing
5 planning documents when performed by, or under the supervision
6 of, a licensed engineer, including the design, development and
7 testing of mechanical, electrical, hydraulic, chemical,
8 pneumatic or thermal machinery or equipment, industrial or
9 commercial work systems or processes and military equipment.

10 "Engineering services" does not include medical or medical
11 laboratory services, any engineering performed in connection
12 with a construction service or the design and installation of
13 computer or computer network infrastructure;

14 (3) "financial management services" means
15 managing and directing the investments of, or providing
16 investment advisory services to, a hedge fund, mutual fund or
17 non-captive real estate investment trust;

18 (4) "hedge fund" means a private investment
19 fund or pool, the assets of which are managed by a professional
20 management firm that:

21 (a) trades or invests, through public
22 market or private transactions, in securities, commodities,
23 currencies, derivatives or similar classes of financial assets;
24 or

25 (b) that is not an investment company

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1 under 15 USC 80a-3(c)(1) or 15 USC 80a-3(c)(7);

2 (5) "human resources services" means managing
3 and overseeing the recruitment, management or termination of a
4 business's employees, including employee recruitment; managing
5 employee relations; maintaining employment files; setting
6 personnel policies; managing and administering employee
7 payroll, benefits and compensation, including employee
8 withholding; overseeing employee discipline and termination;
9 and ensuring compliance with labor and antidiscrimination laws.
10 "Human resources services" does not include training or
11 providing required certification to a business's employees or
12 employee efficiency consulting;

13 (6) "information technology services" means
14 separately stated services for installing and maintaining a
15 business's computers and computer network, including performing
16 computer network design; installing, repairing, maintaining or
17 restoring computer networks, hardware or software; and
18 performing custom software programming or making custom
19 modifications to existing software programming. "Information
20 technology services" does not include:

21 (a) software maintenance and update
22 agreements, unless made in conjunction with custom programming;

23 (b) computers, servers, chilling
24 equipment and pre-programmed software;

25 (c) data processing services or the

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1 processing or storage of information to compile and produce
2 records of transactions for retrieval or use, including data
3 entry, data retrieval, data searches and information
4 compilation; or

5 (d) access to telecommunications or
6 internet;

7 (7) "legal services" means services performed
8 by a licensed attorney or under the supervision of a licensed
9 attorney for a client, regardless of the attorney's form of
10 business entity or whether the services are prepaid, including
11 legal representation before courts or administrative agencies;
12 drafting legal documents, such as contracts or patent
13 applications; legal research; advising and counseling;
14 arbitration; mediation; and notary public and other ancillary
15 legal services performed for a client in conjunction with and
16 under the supervision of a licensed attorney. "Legal services"
17 does not include lobbying or government relations services,
18 title insurance agent services, licensing or selling legal
19 software or legal document templates, insurance investigation
20 services or any legal representation involving financial crimes
21 or tax evasion in New Mexico;

22 (8) "mutual fund" means an entity registered
23 pursuant to the federal Investment Company Act of 1940;

24 (9) "real estate investment trust" means an
25 entity described in Section 856(a) of the Internal Revenue Code

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1 of 1986, as that section may be amended or renumbered, the
2 investments of which are limited to interest in mortgages on
3 real property and shares of or transferable certificates of
4 beneficial interest in an entity described in Section 856(a);
5 provided that a real estate investment trust does not include a
6 captive real estate investment trust as defined in the
7 Corporate Income and Franchise Tax Act; and

8 (10) "temporary services" means an employment
9 situation in which an employee is expected to remain in a
10 position for a specified period of time. "Temporary services"
11 includes services performed by a skilled or unskilled person
12 replacing or supporting client company staff for business
13 purposes. "Temporary services" does not include services
14 performed by a temporary service provider that is not licensed
15 as such by the state or subcontracted services."

16 SECTION 2. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2022.